

There is no direct authority bearing on the issue of law raised in this case. The arguably similar case is *Rivlin v. Bilainkin*.⁽⁴⁾ Dr. Lilian Rivlin started proceedings against the defendant, Mr. George Bilainkin, her former husband, for alleged defamation against her. An interim injunction was granted against the defendant. The defendant, ignoring or in defiance of the injunction, went to the House of Commons and handed to the messenger of the House five communications for delivery to named Members of Parliament. The communications repeated the matters complained of in the slander proceedings. The defendant, it appeared, wanted a Select Committee to consider his grievance. But it was equally apparent that the document was initiated by him and it was not in response to any invitation from the House of Commons. The plaintiff applied to the Judge in chambers for an order of committal against the defendant on whose behalf it was argued that it was a privilege of Parliament that all members were entitled to be approached in the House of Parliament by anyone desiring parliamentary action and that anyone who impeded such approach was in breach of parliamentary privilege.

Not unexpectedly, McNair J. (as he then was) ruled that no question of parliamentary privilege arose. He said at page 488: "... and particularly, I rely on the fact that the publication was not connected in any way with any proceedings in that House." It seemed to me that drawing on the implications of this decision, much could be said that written representations to a Select Committee in response to an invitation of Parliament would constitute them as a part of proceedings in Parliament.

Notwithstanding what I had set out earlier in these Grounds of Decision, I should perhaps indicate the view of the law which I tentatively hold at this interlocutory stage, although what follows hereafter should be subject to full arguments, including submissions from the learned Attorney-General at the trial.

A consideration of the term "proceedings in Parliament" must include a reference to *Erskine May's Parliamentary Practice*, 20th edn., in which the following passage appears at page 92:

"The primary meaning, as a technical parliamentary term, of 'proceedings' (which it had at least as early as the seventeenth century) is some formal action, usually a decision, taken by the House in its collective capacity. This is naturally extended to the forms of business in which the House takes action, and the whole process, the principal part of which is debate, by which it reaches its decision."

A Although in the following two pages of *Erskine May* it is stated that "the meaning of the term 'proceedings in Parliament' has not been expressly defined by the courts" in the United Kingdom, it seems to me that any matter which has a close relationship with the affairs of Parliament or its decision-making process attracts the doctrine of absolute parliamentary privilege.

B
C In my opinion, the absolute privilege of "proceedings in Parliament" within the meaning of that expression under section 4 of the Act attaches to the written representations submitted to the Clerk of Parliament by a member of the public in response to an invitation of a Select Committee of Parliament. This may be garnered by implication from *Rivlin v. Bilainkin* (*supra*). I hasten to add that the absolute privilege is not a privilege to be malicious, but a privilege granted so that such written representations should be exempt from any inquiry whether they were prompted by malice or not, it being for the public interest that such written representations, be they true or false, should be made to Parliament or a Select Committee of Parliament without any apprehension of subsequent legal proceedings. If they are false, it is for Parliament or the Select Committee, as the case may be, to reject or otherwise deal with the false representations.

Appeal dismissed.

Solicitors: *Gopalan Nair; Godwin & Co.*

G LAM CHIAK v. PUBLIC PROSECUTOR

[O.Cr.J. (Thean J.) August 22, 1985]
[Singapore – Criminal Motion No. 34 of 1985]

H *Criminal Law and Procedure – Search warrant – Warrant did not specify period in which it was to remain in force – Whether invalid – Criminal Procedure Code (Cap. 113), s.62(2).*

I This is an application for an order that the execution of the Warrant to Search No. 0172 dated November 3, 1984 ("the warrant") be declared invalid and the goods seized pursuant to the warrant be returned to the applicant on the ground that the warrant was not in force on the date of execution. The warrant was issued by a magistrate upon a complaint made to him that an offence under section 3(1) of the Copyright (Gramophone Records and Government Broadcasting) Act (Cap. 188) had been committed. The warrant authorised and required the Officer named therein to search for articles specified therein at the

applicant's premises and, if found, to produce the same forthwith before the Magistrate's Court. The warrant was executed six days later on November 8, 1984 by Detective/Corporal D. Rajoo. It did not specify the period in which it was to remain in force. The applicant contended that under section 62(2) of the Criminal Procedure Code (Cap. 113), every warrant to search shall remain in force for a reasonable number of days to be specified in the warrant. Hence the execution of the warrant on November 8 was unlawful and accordingly, all the goods seized by the police should be returned to the applicant.

Held: (1) section 62(2) does not provide that a warrant shall specify a reasonable number of days in which it is to remain in force. What it provides essentially is the continuation in force of a warrant after its issue, subject only to one limitation: the period therein to be specified in which it is to remain in force must be reasonable. The requirement to specify the number of days in a warrant is directory and not mandatory;

(2) in the instant case the failure to specify in the Warrant the number of days in which the warrant was to remain in force did not render the warrant invalid immediately after the date of its issue. The warrant was valid when it was issued and remained valid for a reasonable number of days, notwithstanding that such number of days was not stated therein. (In the circumstances of this case a period of five to seven days after its issue was undoubtedly reasonable);

(3) the warrant was therefore in force at the date of its execution.

CRIMINAL MOTION.

Laurence John Wee for the applicant.

Spencer Gwee Hak Theng (on a *fiat*) for the Public Prosecutor.

Cur. Adv. Vult.

Thean J.: This is an application for an order that the execution of the Warrant to Search No. 0172 dated November 3, 1984 ("the warrant") be declared invalid and the goods seized pursuant to the warrant be returned to the applicant on the ground that the warrant was not in force on the date of execution. The warrant was issued by the magistrate on that day upon a complaint made to him that an offence under section 3(1) of the Copyright (Gramophone Records and Government Broadcasting) Act (Cap. 188) had been committed and the warrant authorised and required the officer named therein to search for articles specified therein at the premises of the applicant, namely, Lucky Music Centre, # B1-59, Lucky Plaza, Singapore 0923 and if found, to produce the same forthwith before the Magistrate's Court. The warrant was executed on November 8, 1984 by Detective/Corporal D. Rajoo of the Commercial Crime Division accompanied by representatives of the

A IFPI (South East Asia) Ltd.

Mr. Wee on behalf of the applicant submits that under section 62(2) of the Criminal Procedure Code (Cap. 113) every warrant to search shall remain in force for a reasonable number of days to be specified in the warrant. In the instant case the warrant did not specify the period in which it was to remain in force. Accordingly, the warrant was in force only on the day it was issued, November 3, 1984, and not subsequently, and hence the execution of the warrant on November 8, 1984, some six days later, was unlawful. He further submits that all the goods seized and taken by the police in the unlawful execution of the warrant should be ordered to be returned to the applicant.

Initially, I felt persuaded by this argument. However, on a careful perusal of the said section 62(2) and on further reflection I find it difficult to sustain such an argument upon a true construction of section 62(2). A warrant duly issued under section 60 or 61 (as the case may be) of the Criminal Procedure Code and in compliance with section 62(1) thereof comes into force upon its issue. And under section 62(2) thereof the warrant is to remain in force for a reasonable number of days to be specified therein. The said section 62(2) is in the following terms:

"(2) Every such warrant shall remain in force for a reasonable number of days to be specified in the warrant."

It is significant to note that the subsection does not provide that a warrant shall specify a reasonable number of days in which it is to remain in force. What it provides essentially is the continuation in force of a warrant after its issue, subject only to one limitation: the period therein to be specified in which it is to remain in force must be reasonable. That is the essence of the subsection. As to what number of days is considered to be reasonable must inevitably depend on the circumstances: such as the area in which the search is to be conducted, the articles or goods to be searched and the offence alleged to be committed. The legislature has deemed fit to leave it to the court issuing the warrant to specify, as an administrative act, the number of days in which the warrant is to remain in force. Whatever may be the number of days specified therein, it must meet the test of reasonableness; and the test is an objective one. On a true construction of subsection (2) of section 62 the requirement to specify the number of days in a warrant is directory and not mandatory, and a failure to comply with such

requirement is not fatal to the continuation in force of the warrant after its use.

In the instant case the failure to specify in the warrant the number of days in which the warrant was to remain in force did not render the warrant invalid immediately after the date of its issue. The warrant was valid when it was issued and remained valid for a reasonable number of days, notwithstanding that such number of days was not stated therein. In my view, in the circumstances of this case a period of five to seven days after its issue was undoubtedly reasonable. Accordingly, I hold that the warrant was in force at the date of its execution, namely, November 8, 1984.

At any rate, even if I am persuaded to hold that the warrant was invalid at the date of its execution, I would, nevertheless, not be disposed to make an order for the return of the goods seized to the applicant. The applicant has been charged in the Magistrate's Court for offences under section 3(1) of the Copyright (Gramophone Records and Government Broadcasting) Act (Cap. 188) and the hearing of such charges is pending. The goods seized are obviously material exhibits for the purpose of the hearing before the magistrate's court. In these circumstances, I would be disposed to make an order that the exhibits remain where they are.

I therefore dismiss this application.

Application dismissed.

Solicitors: *Wee Ramayah & Partners; Lee & Lee.*

A MALAYSIAN REPORTS

HONG LEONG FINANCE BHD. v. DATANG-JADI INDUSTRY SDN. BHD.

[S.C. (Lee Hun Hoe C.J. (Borneo), Wan Suleiman & Syed Agil Barakbah S.C.JJ.) September 19, 1985]

[Kuala Lumpur – Supreme Court Civil Appeal No. 127 of 1985]

Practice and Procedure – Distress for rent – Seizure of goods – Goods leased to tenant – Lease terminated but goods not repossessed – Delay – Reputed ownership – Distress Act 1951, ss. 10(1) & 12.

In this case the respondent, the landlord of a warehouse, obtained a Warrant of Distress against the tenant of the premises for arrears of rent. The goods found in the warehouse were seized. The appellants were the owners of some of the machines distrained which were leased to the tenant. The appellants had terminated the agreement and asked that the goods be delivered to them forthwith but they had taken no positive steps to repossess the goods. The appellants applied for the release of the goods. The application was dismissed in the High Court and the appellants appealed.

Held: although the appellants had withdrawn the consent to continued possession of the goods, the learned Judge had held that six months was too long a period for the appellants to take positive steps to assert ownership. The question of delay is a finding of fact by the learned judge and in the circumstances the appeal must be dismissed.

F Cases referred to:

- (1) *Times Furnishing Company Ltd. v. Hutchings & Anor.* [1938] 1 K.B. 775.
- (2) *In re Fox* [1948] Ch. 407, 413.
- (3) *Perdana Properties Berhad v. United Orient Leasing Company Sdn. Bhd.* [1982] 1 M.L.J. 1.
- (4) *Singma Sawmill Co. Sdn. Bhd. v. Asian Holdings* [1979] 1 M.L.J. 41.
- (5) *United Orient Leasing Co. Sdn. Bhd. v. Perdana Properties Sdn. Bhd.* [1980] 2 M.L.J. 130, 133.

G

SUPREME COURT.

H *Miss Jennifer Cheong for the appellant.*
Chong Foo Seong for the respondent.

Cur. Adv. Vult.

I Lee Hun Hoe C.J. (Borneo) (delivering the Judgment of the Court): We dismissed the appeal and stated we would give our reasons later. We do so now.

The plaintiff (now respondent) is the landlord of a warehouse No. 174, Harper Street, Klang which was rented to the defendant at a monthly